

**UNINCORPORATED COUNTY AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ron Allen**

**This act modifies the Alcoholic Beverage Control Act by amending the limitations on the Alcoholic Beverage Control Commission's power to grant licenses in unincorporated county areas.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**32A-4-101**, as renumbered and amended by Chapter 23, Laws of Utah 1990

**32A-10-201**, as enacted by Chapter 23, Laws of Utah 1990

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **32A-4-101** is amended to read:

**32A-4-101. Commission's power to grant licenses -- Limitations.**

(1) Before any restaurant may sell or allow the consumption of liquor on its premises, it shall first obtain a license from the commission as provided in this part.

(2) The commission may issue restaurant liquor licenses for the purpose of establishing restaurant liquor outlets at places and in numbers it considers proper for the storage, sale, and consumption of liquor on premises operated as public restaurants.

(3) Subject to this Subsection (3), the total number of restaurant liquor licenses may not at any time aggregate more than that number determined by dividing the population of the state by 4,500. Population shall be determined by the most recent United States decennial or special census or by any other population determination made by the United States or state governments.

(a) The commission may issue seasonal restaurant liquor licenses established in areas and for periods it considers necessary. A seasonal restaurant liquor license may not be operated for a period longer than nine consecutive months subject to the following restrictions:

(i) Licenses issued for operation during summer time periods are known as "Seasonal A"



restaurant licenses. The period of operation for a "Seasonal A" restaurant license may begin as early as February 1 and may continue until October 31.

(ii) Licenses issued for operation during winter time periods are known as "Seasonal B" restaurant licenses. The period of operation for a "Seasonal B" restaurant license may begin as early as September 1 and may continue until May 31.

(iii) In determining the number of restaurant liquor licenses that the commission may issue under this section, seasonal licenses are counted as ~~[one-half]~~ 1/2 of one restaurant liquor license. Each "Seasonal A" license shall be paired with a "Seasonal B" license and the total number of months that each combined pair may be issued for operation may not exceed 12 months for each calendar year.

(b) If the location, design, and construction of a hotel may require more than one restaurant liquor sales location within the hotel to serve the public convenience, the commission may authorize the sale of liquor at as many as three restaurant locations within the hotel under one license if the hotel has a minimum of 150 guest rooms and if all locations under the license are within the same hotel facility and on premises that are managed or operated and owned or leased by the licensee. Facilities other than hotels shall have a separate restaurant liquor license for each restaurant where liquor is sold.

(4) (a) Restaurant liquor licensee premises may not be established within 600 feet of any public or private school, church, public library, public playground, or park, as measured by the method in Subsection (5).

(b) Restaurant liquor licensee premises may not be established within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground, or park.

(c) The restrictions contained in Subsections (4)(a) and (b) govern unless one of the following exemptions applies:

(i) The commission finds after full investigation that the premises are located within a city of the third class ~~[or], a town, or the unincorporated area of a county~~, and compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of a restaurant liquor license. In that event, the commission may, after giving full consideration to all of the attending circumstances, following a public

59 hearing in the city or town, and where practical in the neighborhood concerned, authorize a  
60 variance from the distance requirements to relieve the difficulties or hardships if the variance may  
61 be granted without substantial detriment to the public good and without substantially impairing  
62 the intent and purpose of this title.

63 (ii) With respect to the establishment of a restaurant licensee in any location, the  
64 commission may, after giving full consideration to all of the attending circumstances, following  
65 a public hearing in the county, and where practical in the neighborhood concerned, reduce the  
66 proximity requirements in relation to a church if the local governing body of the church in question  
67 gives its written approval.

68 (iii) Any on-premises beer retailer licensee existing on March 1, 1990, need not comply  
69 with the restrictions contained in Subsections (4)(a) and (b) if it applies for a restaurant liquor  
70 license before January 1, 1991.

71 (5) With respect to any public or private school, church, public library, public playground,  
72 or park, the 600 foot limitation is measured from the nearest entrance of the outlet by following  
73 the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along  
74 public thoroughfares, whichever is the closer, to the property boundary of the public or private  
75 school, church, public library, public playground, school playground, or park.

76 (6) Nothing in this section prevents the commission from considering the proximity of any  
77 educational, religious, and recreational facility, or any other relevant factor in reaching a decision  
78 on a proposed location. For purposes of this Subsection (6), "educational facility" includes nursery  
79 schools, infant day care centers, and trade and technical schools.

80 Section 2. Section **32A-10-201** is amended to read:

81 **32A-10-201. Commission's power to grant licenses -- Limitations.**

82 (1) Beginning January 1, 1991, before any establishment may sell beer at retail for  
83 on-premise consumption, it shall first obtain:

84 (a) an on-premise beer retailer license from the commission as provided in this part; and

85 (b) a license issued by the local authority, as provided in Section 32A-10-101, to sell beer  
86 at retail for on-premise consumption or other written consent of the local authority to sell beer at  
87 retail for on-premise consumption.

88 (2) The commission may issue on-premise beer retailer licenses for the purpose of  
89 establishing on-premise beer retailer outlets at places and in numbers as it considers proper for the

storage, sale, and consumption of beer on premises operated as on-premise beer retailer outlets.

(3) (a) Beginning January 1, 1991, on-premise beer retailer licensee premises may not be established within 600 feet of any public or private school, church, public library, public playground, or park, as measured by the method in Subsection (5).

(b) Beginning January 1, 1991, on-premise beer retailer licensee premises may not be established within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground, or park.

(4) The restrictions of Subsection (3) govern unless one of the following exemptions applies:

(a) The commission finds after full investigation that the premises are located within a city of the third class ~~[or], a town, or the unincorporated area of a county~~, and compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of an on-premise beer retailer license. In that event, the commission may, after giving full consideration to all of the attending circumstances, following a public hearing in the city or town, and where practical in the neighborhood concerned, authorize a variance from the distance requirements to relieve the difficulties or hardships if the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this title.

(b) With respect to the establishment of an on-premise beer retailer licensee in any location, the commission may, after giving full consideration to all of the attending circumstances, following a public hearing in the county, and where practical in the neighborhood concerned, reduce the proximity requirements in relation to a church if the local governing body of the church in question gives its written approval.

(c) With respect to any on-premise beer retailer license issued by the commission before July 1, 1991, to an establishment that undergoes a change in ownership after that date, the commission may waive the proximity restrictions of Subsection (3) in considering whether to grant an on-premise retailer beer license to the new owner.

(5) With respect to any public or private school, church, public library, public playground, or park, the 600 foot limitation is measured from the nearest entrance of the outlet by following

121 the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along  
122 public thoroughfares, whichever is the closer, to the property boundary of the public or private  
123 school, church, public library, public playground, school playground or park.

124 (6) Nothing in this section prevents the commission from considering the proximity of any  
125 educational, religious, and recreational facility, or any other relevant factor in reaching a decision  
126 on a proposed location. For purposes of this Subsection (6), "educational facility" includes  
127 nursery schools, infant day care centers, and trade and technical schools.

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**Legislative Review Note****as of 12-19-01 9:12 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**